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09/785,100	02/15/2001	William Patrick Apps	RPC 0559 PUS	7269

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

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**MAILED**

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**GROUP 3700**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 18

Application Number: 09/785,100  
Filing Date: February 15, 2001  
Appellant(s): APPS, WILLIAM PATRICK

Robert Brandenburg  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed October 11, 2003.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows:

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- A. Whether claims 1-51 are anticipated under 35 U.S.C. 102(e) by Apps et al. (5,651,461) (Apps '461).
- B. Whether claims 15-19, 21-26, 50 and 51 are anticipated under 35 U.S.C. 102(e) by Apps et al. (5,704,482) (Apps '482).
- C. Whether claims 28-30 and 32-39 are anticipated under 35 U.S.C. 102(b) and/or 102(e) by Koefeldt et al. (5,465,843).
- D. Whether claims 1-51 are rejected under the judicially created doctrine of double patenting over claims 1-5 of U.S. Patent No. 5,979,654 to Apps (Apps '654).
- E. Whether claims 1-51 are rejected under the judicially created doctrine of double patenting over figures 1-12 of U.S. Patent No. D400,012 to Apps (Apps '012).

**(7) Grouping of Claims**

Appellant's brief includes a statement that claims 1-51 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

5,651,461	APPS et al.	7-1997
5,704,482	APPS et al.	1-1998
5,465,843	KOEFELDA	11-1995

5,979,654	APPS	11-1999
D400,012	APPS	10-1998

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-51 are rejected under 35 U.S.C. 102(e) as being anticipated by Apps et al. (5,651,461) (Apps '461). This rejection is set forth in prior Office Action, Paper No. 15.

Claims 15-19, 21-26, 50 and 51 are rejected under 35 U.S.C. 102(e) as being anticipated by Apps et al. (5,704,482) (Apps '482). This rejection is set forth in prior Office Action, Paper No. 15.

Claims 28-30 and 32-39 are rejected under 35 U.S.C. 102(b) and/or (e) as being anticipated by Koefeldt et al. (5,465,843). This rejection is set forth in prior Office Action, Paper No. 15.

Claims 1-51 are rejected under the judicially created doctrine of double patenting over claims 1-5 of U.S. Patent No. 5,979,654 to Apps (Apps '654). This rejection is set forth in prior Office Action, Paper No. 15.

Claims 1-51 are rejected under the judicially created doctrine of double patenting over figures 1-12 of U.S. Patent No. D400,012 to Apps (Apps '012). This rejection is set forth in prior Office Action, Paper No. 15.

**(11) Response to Argument**

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It may be true that none of the applied references used in the anticipatory rejections is made specifically to hold a bottle carrier in the form of a six-pack carton. However, appellant's claims are not directed to the combination of a crate and bottle carrier in the form of a six-pack carton. Appellant doesn't broadly claim the combination of a crate and bottle carriers. Appellant's claims are much broader and are directed to the broad invention of a bottle crate intended for use with bottle carriers.

Appellant states that the prior art bottle crates are not suitable for bottle carriers but does not indicate any specific claim limitation that defines the crate of the present invention as being more suitable than the prior art bottle crates applied in the anticipatory rejections. Appellant does not consider that the term "bottle carriers" must be broadly interpreted to encompass more than the specific carrier which appellant has disclosed in the present application. Bottle carrier refers to any hypothetically designed bottle carrier including a carrier of much smaller dimensions for bottles of significantly smaller dimensions or a carrier which holds only one bottle, such as a beverage cozy. There are many bottle carriers for use with multiple bottles of 1 oz. or smaller capacity which are used in chemical test kits to test ph or ammonium levels in pool or aquarium water or to perform chemical testing in a lab.

An alternate view of the prior art considers the disclosed stack of crates. The anticipatory prior art references are all nestable/stackable crates. When two or more of the crates are nested or stacked, the lower crate is deemed a crate as specified by the invention and the upper crate is a bottle carrier as specified by the invention. Each of the bottle carriers holds at least six bottles.

Response to Issue A:

Of course, a bottle carrier sized to hold six-12 oz. bottles in a 2 X 3 array would not fit in the space designed for the circumference of a two-liter bottle. However, six-1 oz. bottles in a carrier of approximately 2 in. by 3 in. dimensions would fit in the space designed for a two-liter bottle and each bottle pocket could hold a separate carrier. Also, a beverage cozy designed for a 7 or 12 oz. bottle would fit the two-liter bottle pocket.

Regarding claims 2 and 16, the pylons 58 have flat interior surfaces capable of providing lateral support to bottle carriers.

Regarding claim 22, the upper edge of pylons 58 which is directed to face the bottles is concavely curved and includes a rounded portion.

Regarding claim 27, see Fig. 3 and the plurality of ribs shown at 35 extending inwardly perpendicular from the inner surface of the outer wall.

#### Response to Issue B:

Apps ('482) has no interior columns or partitions to obstruct a six-pack carrier which holds six-12 oz. bottles in a 2 X 3 array. Apps ('482) has the space to hold 2 or 3 six-pack carriers transversely oriented with respect to the crates longitudinal axis. Apps ('482) is even more capable than Apps ('461) of holding smaller bottle carriers designed for fewer bottles or designed for bottles of smaller capacity.

Regarding claim 16, see Fig. 1, surface 56 forms a surface on the teeth panel which is flat and co-planar with the interior bottle carrier support surfaces.

#### Response to Issue C:

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Koefeld has no interior columns or partitions to obstruct a six-pack carrier which holds six-12 oz. bottles in a 2 X 3 array. Koefeld has the space to hold 2 or 3 six-pack carriers transversely oriented with respect to the crates longitudinal axis. Koefeld is even more capable than Apps ('461) of holding smaller bottle carriers designed for fewer bottles or designed for bottles of smaller capacity.

Regarding claim 28, handle bar 282 shown in Fig. 16 may be encircled by a user's hand and/or fingers.

Regarding claim 33, panels 70 and 72 are flat and capable of providing support to bottle carriers (see Fig. 5, 8, 9, 14 and 15).

Response to Issues D and E:

The examiner did not intend to make a obviousness-type double patenting rejection. However, the examiner responds to appellant's argument by stating that all the elements not claimed were obvious because these elements are old and well known in crate design.

For claim 1, the only difference between claim 1 of the present application and claim 1 of Apps ('654) is that line 7 of Apps ('654) has the word "solid" added. Appellant is only broadening the claim and does not make the claim more specific. "Solid" is an adjective describing the surface. Appellant has not significantly changed the claim and is, in essence, applying for an extension of the "right to exclude." It would be meaningless to state that the claim could be modified to be "not solid" as claim 1 of the application still includes solid surfaces. A solid surface is not precluded. In actuality, claim 1 of Apps ('654) anticipates



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because it is more specific. However, The claims are not exactly the same claim so straight double patenting is not the issue.

In instances where the claims are made broader by deleting limitations, it would have been obvious to delete these limitations and their respective function when these functions are deemed unnecessary.

Regarding the design patent, Apps ('012), the claims in a design patent are the figures. Since the figures show everything in the claims and much more. The obviousness would be the deletion of those elements not necessary.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc  
October 22, 2003

Conferees

njn

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